

## **REMARKS**

Reconsideration of the application, as amended, is respectfully requested.

Applicants are repeating herein the amendment faxed August 26, 2003, which was not entered.

Also, the amendment to claim 11 mentioned in the Remarks, but inadvertently not included is included herein. Also, an amendment to correct a typographical error in claim 13 is presented herein. Finally, new claim 15 is added, based on page 9, first paragraph of the specification.

### **Rejection Under 35 USC §112**

The Examiner has stated that the term "non-fermented mixture" is indefinite. Although it is not agreed that the term is indefinite, Applicants have amended the claim to recite that the non-fermented mixture is milk based. The support for this amendment is implicit throughout the specification. The entire specification is directed towards making a milk-based food product and whenever the composition of the non-fermented mixture is specified, it is milk-based. For example, on page 6, line 9 the unfermented pre-mix is milk-based (see line 24). Additionally, page 13 discusses the addition of a non-fermented mixture to the fermented mixture in the context of making milk-based food products. When a composition is specified (line 24), the non-fermented mixture has the same composition as the milk-based fermented mixture.

### **Rejection Under 35 USC §102**

The Examiner has stated that U.S. Patent No. 5,308,628 (Schol et al.) describes a method of fermenting a lactic-acid bacterial culture in a milk composition "until the mixture reaches a pH in the range of between 4.3 and 5.5".

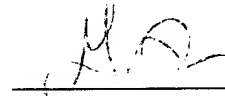
Claim 1 has been amended to specify that the pH of the mixture remains above pH 5.5, which is outside the range described in U.S. Patent No. 5,308,628. Hence, claim 1, as amended, is novel. This amendment is supported at page 6, top paragraph.

Rejection Under 35 USC §103

The Office has stated that claims 8 and 9 are obvious in light of Schol et al. Claims 8 and 9 depend from Claim 1 hence they incorporate each and every limitation of Claim 1. As the Office did not reject Claim 1 to be obvious in light of Schol et al., then claims 8 and 9 are not obvious either. Moreover, even if the reference is read to teach a pH of 5.5, claim 1 has been amended to recite "above 5.5." The Office points to no teaching of this, so claims 8 and 9 are allowable at least by virtue of their dependence upon novel and non-obvious Claim 1.

In view of the foregoing, it is respectfully requested that the application, as amended, be allowed.

Respectfully submitted,



---

Gerard J. McGowan, Jr.  
Attorney for Applicant(s)  
Reg. No. 29,412

GJM/pod  
(201) 840-2297